



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,225	09/16/2003	Pontus von Bahr	514862000700	3377
20872	7590	12/03/2008		
MORRISON & FOERSTER LLP			EXAMINER	
425 MARKET STREET			ALEXANDER, LYLE	
SAN FRANCISCO, CA 94105-2482				
			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			12/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/664,225	VON BAHR ET AL.
	Examiner Lyle A. Alexander	Art Unit 1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 August 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9, 11-16, 18-24, 26, 27 and 29-31 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9, 11-16, 18-24, 26, 27 and 29-31 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-9,11-13, 19-23 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roller et al. (USP 7,192,782) in view of Birks et al.

Roller et al. teach a method and apparatus for measuring the concentrations of specific gases, such as NO, in human breath samples. Roller et al. teach in columns 4-5 lines 65-3 respectively, supplying the breath sample to the NO analyzer at a first flow rate and a second flow rate which is less than the first. The taught **first flow rate** has been read on the claimed "*exhalation flow rate*" and the taught **second flow rate** has been read on the claimed "*suitable flow rate for the NO sensor*." Further, column 8 lines 17-23 teach the differential flow rates is accomplished by flow rate controller which has been read on the claimed "means for feeding the sample." Finally, columns 7-8 lines 66-23 respectively, teach it is advantageous to manipulate the pressures to "reduce line broadening as well as interference between absorption characteristics." Roller et al. also teach in column 8 lines 60-63 pumping rates of the gas that vary from approximately 8.3-500 ml/s and has been read on the taught device as being capable of the claimed flow rate of 45-55 ml/s.

Roller is silent to the use of a scrubber.

Birks et al. teach use of a NO scrubber on a gas sample prior to the analyzer to aide in the NO calculations and calibrations.

It would have been within the skill of the art to modify Roller et al. in view of Birks et al. and use a NO scrubber on the sample prior to analysis to gain the above advantages of aiding in NO calculations and calibrations.

Claims 14-15,18 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roller et al. (USP 7,192,782) in view of Birks et al. as applied to claims 1-9,11-13, 18-23 and 30-31 above, and further in view of Holowko et al.

See Roller et al. (USP 7,192,782) in view of Birks et al. *supra*.

See the appropriate paragraph of the 1/3/08 Office action for the teachings of Holowko et al.

Claims 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roller et al. (USP 7,192,782) in view of Birks et al. as applied to claims 1-9,11-13, 18-23 and 30-31 above, and further in view of Oswin et al.

See Roller et al. (USP 7,192,782) in view of Birks et al. *supra*.

See the appropriate paragraph of the 1/3/08 Office action for the teachings of Oswin et al.

Response to Arguments

Applicant's arguments with respect to claims 1-9, 11-16,18-24,26,27 and 29-31 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander
Primary Examiner
Art Unit 1797

/Lyle A Alexander/
Primary Examiner, Art Unit 1797